

if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) 90 days before the date of the filing of the petition; and

(B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.

(2) In this subsection, “insufficiency” means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

(c) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2602; Pub. L. 98-353, title III, §§395, 467, July 10, 1984, 98 Stat. 365, 380; Pub. L. 101-311, title I, §105, June 25, 1990, 104 Stat. 268; Pub. L. 103-394, title II, §§205(b), 222(b), title V, §501(d)(19), Oct. 22, 1994, 108 Stat. 4123, 4129, 4146.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 553 of the House amendment is derived from a similar provision contained in the Senate amendment, but is modified to clarify application of a two-point test with respect to setoffs.

SENATE REPORT NO. 95-989

This section preserves, with some changes, the right of setoff in bankruptcy cases now found in section 68 of the Bankruptcy Act [section 108 of former title 11]. One exception to the right is the automatic stay, discussed in connection with proposed 11 U.S.C. 362. Another is the right of the trustee to use property under section 363 that is subject to a right of setoff.

The section states that the right of setoff is unaffected by the bankruptcy code except to the extent that the creditor's claim is disallowed, the creditor acquired (other than from the debtor) the claim during the 90 days preceding the case while the debtor was insolvent, the debt being offset was incurred for the purpose of obtaining a right of setoff, while the debtor was insolvent and during the 90-day prebankruptcy period, or the creditor improved his position in the 90-day period (similar to the improvement in position test found in the preference section 547(c)(5)). Only the last exception is an addition to current law.

As under section 547(f), the debtor is presumed to have been insolvent during the 90 days before the case.

REFERENCES IN TEXT

Section 362(b)(14), referred to in subsec. (b)(1), was redesignated section 362(b)(17) by Pub. L. 103-394, title V, §501(d)(7)(B)(vii)(II), (III), Oct. 22, 1994, 108 Stat. 4144.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-394, §501(d)(19)(A), struck out before semicolon at end “other than under section 502(b)(3) of this title”.

Subsec. (b)(1). Pub. L. 103-394, §501(d)(19)(B), substituted “section 362(b)(14),” for “section 362(b)(14),”.

Pub. L. 103-394, §222(b), which directed the amendment of section 553(b)(1) by inserting “546(h),” after “365(h),” was executed by making the insertion in section 553(b)(1) of this title to reflect the probable intent of Congress.

Pub. L. 103-394, §205(b), substituted “365(h)” for “365(h)(2)”.

1990—Subsec. (b)(1). Pub. L. 101-311 substituted “362(b)(7), 362(b)(14),” for “362(b)(7),”.

1984—Subsec. (b)(1). Pub. L. 98-353 inserted “362(b)(7),” after “362(b)(6),” and substituted “365(h)(2), or 365(i)(2)” for “or 365(h)(1)”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 349, 502, 506, 522, 541, 542, 546, 550, 901 of this title; title 15 section 78eee.

§ 554. Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2603; Pub. L. 98-353, title III, §468, July 10, 1984, 98 Stat. 380; Pub. L. 99-554, title II, §283(p), Oct. 27, 1986, 100 Stat. 3118.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 554(b) is new and permits a party in interest to request the court to order the trustee to abandon property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

SENATE REPORT NO. 95-989

Under this section the court may authorize the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. Abandonment may be to any party with a possessory interest in the property abandoned. In order to aid administration of the case, subsection (b) deems the court to have authorized abandonment of any property that is scheduled under section 521(1) and that is not administered before the case is closed. That property is deemed abandoned to the debtor. Subsection (c) specifies that if property is neither abandoned nor administered it remains property of the estate.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-554 substituted “521(1)” for “521(a)(1)”.

1984—Subsecs. (a), (b). Pub. L. 98-353, § 468(a), inserted “and benefit” after “value”.

Subsec. (c). Pub. L. 98-353, § 468(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Unless the court orders otherwise, any property that is scheduled under section 521(1) of this title and that is not administered before a case is closed under section 350 of this title is deemed abandoned.”

Subsec. (d). Pub. L. 98-353, § 468(c), struck out “section (a) or (b) of” after “not abandoned under”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 557, 722 of this title.

§ 555. Contractual right to liquidate a securities contract

The exercise of a contractual right of a stockbroker, financial institution, or securities clearing agency to cause the liquidation of a securities contract, as defined in section 741 of this title, because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency.

(Added Pub. L. 97-222, § 6(a), July 27, 1982, 96 Stat. 236; amended Pub. L. 98-353, title III, § 469, July 10, 1984, 98 Stat. 380; Pub. L. 103-394, title V, § 501(b)(6), (d)(20), Oct. 22, 1994, 108 Stat. 4143, 4146.)

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in text, is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

AMENDMENTS

1994—Pub. L. 103-394 substituted “section 741 of this title” for “section 741(7)” and struck out “(15 U.S.C. 78aaa et seq.)” after “Act of 1970”.

1984—Pub. L. 98-353 inserted “, financial institution,” after “stockbroker”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 556. Contractual right to liquidate a commodities contract or forward contract

The contractual right of a commodity broker or forward contract merchant to cause the liquidation of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

(Added Pub. L. 97-222, § 6(a), July 27, 1982, 96 Stat. 236; amended Pub. L. 101-311, title II, § 205, June 25, 1990, 104 Stat. 270; Pub. L. 103-394, title V, § 501(b)(7), Oct. 22, 1994, 108 Stat. 4143.)

AMENDMENTS

1994—Pub. L. 103-394 substituted “section 761 of this title” for “section 761(4)”.

1990—Pub. L. 101-311 inserted before period at end “and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

§ 557. Expedited determination of interests in, and abandonment or other disposition of grain assets

(a) This section applies only in a case concerning a debtor that owns or operates a grain storage facility and only with respect to grain and the proceeds of grain. This section does not affect the application of any other section of this title to property other than grain and proceeds of grain.

(b) In this section—

(1) “grain” means wheat, corn, flaxseed, grain sorghum, barley, oats, rye, soybeans, other dry edible beans, or rice;

(2) “grain storage facility” means a site or physical structure regularly used to store grain for producers, or to store grain acquired from producers for resale; and

(3) “producer” means an entity which engages in the growing of grain.

(c)(1) Notwithstanding sections 362, 363, 365, and 554 of this title, on the court’s own motion the court may, and on the request of the trustee